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T.R.A. DOCKET ROOM

August 11, 2003

Deborah Taylor Tate, Chairman
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243

Re: *Petition for Arbitration of ITC DeltaCom Communications, Inc. with
BellSouth Telecommunications, Inc. Pursuant to the Telecommunications
Act of 1996
Docket No. 03-00119*

Dear Chairman Tate:

Please accept for filing in the above-captioned proceeding the original and fourteen copies of the Rebuttal Testimony of the following on behalf of ITC^DeltaCom:

Steve Brownworth
Mary Conquest
Pat Heck
Jerry Watts

I have enclosed an additional copy to be stamped "filed." I appreciate your assistance in this matter.

Respectfully submitted,
BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: Leslie Evans
Leslie Evans
414 Union Street, Suite 1600
Nashville, Tennessee 37219
(615) 252-2309

LRE/pp
Enclosure

Cc: Henry Walker

**BEFORE THE
TENNESSEE REGULATORY AUTHORITY**

In the Matter of:

)
)
**Petition of Arbitration of ITC^DeltaCom)
Communications, Inc. with Bellsouth)
Telecommunications, Inc. Pursuant to the)
Telecommunications Act of 1996)**

Docket No. 03-00119

PUBLIC VERSION

**REBUTTAL TESTIMONY OF
JERRY WATTS
ON BEHALF OF
ITC^DELTACOM COMMUNICATIONS, INC.**

1 **Q: PLEASE STATE YOUR NAME, POSITION AND BUSINESS ADDRESS.**

2 **A:** My name is Jerry Watts. I am Vice President of Government and Industry
3 Affairs for ITC^DeltaCom, Inc. My business address is 4092 South
4 Memorial Parkway, Huntsville, Alabama, 35802.

5

6 **Q: WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

7 **A:** The purpose of my testimony is to respond to the testimony of BellSouth
8 witnesses Blake and Ruscilli including certain assertions regarding my
9 direct testimony.

10

11 **RESPONSES TO BELL SOUTH WITNESS BLAKE**

12

13 **Issue 26: Local Switching—Line Cap and Other Restrictions**

14 **Q: REGARDING ISSUE 26(a), BELL SOUTH ARGUES (BLAKE, pp. 3-4)**
15 **THAT FOR CUSTOMERS WITH FOUR OR MORE LINES BELL SOUTH**
16 **IS NOT OBLIGATED TO PROVIDE UNBUNDLED LOCAL SWITCHING**
17 **AS LONG AS OTHER CRITERIA IN FCC RULE 51.319(C)(2) ARE MET.**
18 **IS THIS CORRECT?**

19 **A:** While the parties could argue whether or not the federal “4-line” restriction
20 is consistent with the parts of the FCC’s Triennial Review decision that
21 have been made public, regardless of whether the FCC’s old UNE rules
22 should be given effect, this Authority is not required to utilize the federal
23 “4-line” restriction in Tennessee. As I explained in my previous testimony,

1 the Telecom Act and the FCC's unbundling rules have been consistently
 2 interpreted to provide federally-prescribed *minimum* unbundling
 3 obligations, *to which the states are free to add*, consistent with Section
 4 251(d)(3) of the Act and FCC Rule 317 (which requires the state to
 5 conduct its own "necessary or impair" test prior to requiring additional
 6 unbundling under federal authority).¹ Given that we know the general
 7 direction the FCC is taking with respect to impairment for unbundled
 8 switching—and that no conflict exists between the old rules and what we
 9 know of the new rules—it is clear that the Tennessee Regulatory Authority
 10 has the discretion under federal law to find that ITC^DeltaCom is impaired
 11 without access to unbundled switching at the analog line level.

12
 13 Additionally, the Authority has established BellSouth switching as an
 14 unrestricted network element that must be made available by BellSouth
 15 throughout its Tennessee service area at cost-based rates. Thus, local
 16 switching is an unrestricted UNE that BellSouth must make available to
 17 CLECs at cost-based TELRIC rates throughout its Tennessee service
 18 areas pursuant to the Authority's current regulations and orders.

19
 20 **Q: DOES BELL SOUTH CURRENTLY HAVE THE ABILITY TO BILL**
 21 **UNBUNDLED SWITCHING IN CONJUNCTION WITH THE 4 LINE**
 22 **RULE?**

¹ See 47 U.S.C. § 251(d)(3). See also, 47 C.F.R. § 51.317. For the FCC's consistent interpretation of the Act as permitting state commissions to add to the national list of UNEs, see *Local Competition Order*, ¶¶ 281-83, and the *UNE Remand Order*, ¶¶ 153-55.

1 A: No. Attached as Exhibit A is the BellSouth carrier notice letter informing
2 CLECs that BellSouth will do a "true-up" twice a year. Attached as Exhibit
3 B is a **confidential** spreadsheet containing BellSouth's backbilling to
4 ITC^DeltaCom for market rates. Additionally, BellSouth recently
5 backbilled ITC^DeltaCom for ADUF/ODUF charges as far back as January
6 2002. The bottom line is that BellSouth is not billing CLECs correctly and
7 it appears that despite working on this for several years, BellSouth is not
8 able to modify its billing systems to bill in conjunction with the federal 4-
9 line rule. Moreover, it appears that BellSouth has no plans to correct its
10 billing problems.

11

12 **Q: WITH RESPECT TO ISSUE 26(b), BELL SOUTH ARGUES THAT**
13 **BELL SOUTH SHOULD NOT BE PREVENTED FROM IMPOSING**
14 **RESTRICTIONS ON DELTACOM'S USE OF LOCAL SWITCHING. HOW**
15 **DO YOU RESPOND?**

16 A: BellSouth's assertion is incorrect. First, even if BellSouth is not required
17 under the Section 251(c)(3) UNE rules to provide the element as a UNE,
18 as a Bell Operating Company ("BOC") it continues to have the obligation
19 to provide "interconnection" and certain network elements under the
20 Section 271 competitive checklist. The obligations of Section 271 to
21 BOCs attach independently of Section 251's obligations imposed on
22 ILECs generally. Further, in Section 251 (c)(4)(b) the Act prohibits

incumbents from imposing restrictions on resellers, and establishes as
their duty

“not to prohibit, and not to impose unreasonable or
discriminatory conditions or limitations on, the resale of such
telecommunications service, except that a State commission
may, consistent with regulations prescribed by the
Commission under this section, prohibit a reseller that
obtains at wholesale rates a telecommunications service that
is available at retail only to a category of subscribers from
offering such service to a different category of subscribers.”

The Supreme Court has repeatedly held to “the normal rule of statutory
construction that identical words used in different parts of the same act are
intended to have the same meaning.”² The FCC, in its February 20th
“attachment” to its Triennial Review press release, states

The requirements of section 271(c)(2)(B) establish an
independent obligation for BOCs to provide access to loops,
switching, transport, and signaling under checklist items 4-6
and 10, regardless of any unbundling analysis under section
251. Where a checklist item is no longer subject to section
251 unbundling, section 252(d)(1) does not operate as the
pricing standard. Rather, the pricing of such items is
governed by the “just and reasonable” standard established
under sections 201 and 202 of the Act.

While the FCC, in its explanation, seeks to avoid the “normal rule of
statutory construction” articulated by the Supreme Court by saying that
Section 252(d)(1) “does not operate as the pricing standard,” the FCC
cannot simply ignore the plain language of the Act. Section 252(d)(1) and
Sections 201 and 202 of the Act all use the exact same terms—“just and

² *Brooke Group Ltd. v. Brown & Williamson Tobacco Co.*, 509 U.S. 209, 230 (1993) (internal citations omitted).

1 reasonable.” As the Supreme Court has frequently held, these terms are
2 to be given consistent meaning within the same statute. Moreover, the
3 Tennessee Regulatory Authority in this arbitration is bound by the terms of
4 Section 252(c)(2), which requires that a “State commission shall establish
5 *any rates* for interconnection, *services*, or network elements according to
6 subsection (d).” (emphasis added)

7
8 Thus, the FCC’s press release notwithstanding, it is unlikely that this
9 Authority would ignore the plain language of the Act and allow BellSouth
10 to unilaterally establish its own prices for any element or service required
11 by the Act, regardless of whether the element or service is specifically
12 required under Section 251(c)(3). Should any existing or future UNEs no
13 longer be priced under FCC TELRIC rules, ITC^DeltaCom believes that
14 the Authority will prescribe an alternative pricing methodology for
15 BellSouth “substitute” rates that protects consumers from arbitrary and
16 anticompetitive pricing. Moreover, ITC^DeltaCom has recommended that
17 no “substitute” rate could become effective for BellSouth services without
18 approval by the Authority. Absence of the Authority’s control of the prices
19 for de-listed UNE’s would result in BellSouth’s ability to set rates at levels
20 so high that they would, as a practical matter, be able to discontinue
21 providing the UNE in violation of Section 271.

22
23 Mr. Gillan addressed issues 26 (c) and 26 (d) in his direct testimony.

RESPONSES TO BELLSOUTH WITNESS RUSCILLI

Issue 1: Term of the Agreement

Q: BELLSOUTH WITNESS RUSCILLI SUGGESTS THAT IF THE PARTIES WERE TO CONTINUE TO OPERATE UNDER A COMMISSION-APPROVED INTERCONNECTION AGREEMENT PENDING ARBITRATION OF A NEW AGREEMENT, BELLSOUTH WOULD BE STIFLED IN ITS ABILITY TO IMPLEMENT NEW, EFFICIENT PROCESSES. DO YOU AGREE?

A: No. It is unlikely that that the longer contract term requested by ITC^DeltaCom will force BellSouth to operate inefficiently, as witness Ruscilli contends (pp. 3-4). As an initial matter, ITC^DeltaCom would most likely be more than willing to consensually amend its agreement at any time to allow for BellSouth to implement more productive or efficient processes.

BellSouth and ITC^DeltaCom have periodic meetings to discuss operational problems and to work toward mutually acceptable solutions. A longer term means that the Authority and the parties' resources are more efficiently utilized. In any event, either party can, pursuant to Section 251 and 252 of the Act, appeal to the FCC if a ruling is not issued in the time frame set forth in the Act. Recently during hearings in North Carolina,

1 BellSouth witness Ruscilli offered a three-year contract without a limitation
2 on the month to month continuation at the end of the contract term. While
3 this is an improvement over BellSouth's previous position, it does not
4 address the need for, and economies achieved by, a longer contract
5 period. Clearly a five-year contract, kept current through change of law
6 and other mutually agreed to amendments, will result in less time and
7 expense for all parties and longer periods of continuity in the business
8 relationship between ITC^DeltaCom and BellSouth.
9

10 **Issue 11: Access to UNEs**

11 **Q: BELLSOUTH WITNESS RUSCILLI SUGGESTS THAT ONLY THOSE**
12 **OBLIGATIONS REQUIRED UNDER SECTION 251 OF THE ACT ARE**
13 **PROPERLY INCLUDED WITHIN THE INTERCONNECTION**
14 **AGREEMENT. DO YOU AGREE?**

15 **A:** No. Unfortunately for Mr. Ruscilli's position, the plain language of the Act
16 clearly empowers the Tennessee Regulatory Authority to decide "any
17 open issue" during an arbitration. As long as the provisions in question
18 are not inconsistent with Section 251 and the FCC's regulations
19 implementing that Section, the TRA has discretion to incorporate these
20 issues into the interconnection agreement.³
21

22 Further, given BellSouth's desire to incorporate unilateral amendments to
23 the interconnection agreement by reference (Ruscilli, Issue 58, pp. 26-27),

³ Sections 252(c)(1) and 252(e)(2)(B).

1 it is hard to understand why BellSouth would resist ITC^DeltaCom's desire
2 to incorporate terms concerning other legitimately related services or
3 requirements into the interconnection agreement by reference. The terms
4 of the Authority-designated services or requirements that ITC^DeltaCom
5 seeks to incorporate by reference are not unilaterally set by
6 ITC^DeltaCom. Thus, unlike the situation in which BellSouth seeks the
7 right to unilaterally amend the interconnection agreement (even over
8 ITC^DeltaCom's objection), ITC^DeltaCom does not unilaterally control
9 the services and terms for which it seeks incorporation into the
10 interconnection agreement.

11
12 **Issue 58: Unilateral Amendments to the Interconnection Agreement**

13 **Q: BELLSOUTH WITNESS RUSCILLI CONTENDS THAT ALLOWING**
14 **BELLSOUTH TO UNILATERALLY AMEND INTERCONNECTION**
15 **AGREEMENTS AND CHANGE PRICES IS THE ONLY WAY THAT IT**
16 **CAN EFFICIENTLY IMPROVE ITS PROCESSES. DO YOU AGREE**
17 **THAT REQUIRING BELLSOUTH TO EXECUTE AMENDMENTS WHEN**
18 **IT CHANGES PROVISIONING PROCESSES AND PRICES WOULD**
19 **IMPOSE INEFFICIENCIES ON BELLSOUTH?**

20 **A:** No, I do not believe that denying a dominant supplier unfettered discretion
21 to unilaterally change terms and conditions in interconnection agreements
22 with its wholesale customers will result in any increased inefficiency. If
23 anything, limiting BellSouth's ability to behave like an unregulated

monopoly may well encourage it to treat its customers like competitive market vendors treat their customers. Requiring BellSouth to execute interconnection agreement amendments when it seeks to change processes or prices should encourage BellSouth to work with its customers to develop the most cost-efficient processes for both BellSouth and its wholesale customers. On the other hand, allowing BellSouth unfettered discretion to change processes and impose costs *without regulatory scrutiny* will only further encourage BellSouth to inefficiently transfer costs to its wholesale customers and ultimately Tennessee consumers.

Issue 59: Payment Due Date

Q: BELLSOUTH CONTENDS THAT ITC^DELTACOM SHOULD BE REQUIRED TO PAY ITS BILL ON THE NEXT BILL DATE, REGARDLESS OF WHEN ITC^DELTACOM ACTUALLY RECEIVES THE BILL. WHAT WOULD BE THE EFFECT OF SUCH A REQUIREMENT?

A: It would do nothing more than penalize ITC^DeltaCom for BellSouth's inefficiency, while providing no corresponding incentive for BellSouth to become anything but more inefficient. BellSouth would have no incentive to become more efficient in its billing processes. To the contrary, BellSouth would benefit by allowing ITC^DeltaCom less time to thoroughly analyze its bills. Even if ITC^DeltaCom could effectively analyze its bills

1 within the less-than-thirty-day time frame BellSouth proposes, it would
2 expend more resources to accomplish the task in a shortened interval.
3 ITC^DeltaCom therefore would bear the costs of any increased
4 inefficiency on the part of BellSouth. Approximately 95% of BellSouth's
5 billing to ITC^DeltaCom is by way of electronic invoicing. Although these
6 bills are delivered electronically they are not sent to ITC^DeltaCom for up
7 to seven days after the billing date. BellSouth controls the delivery date
8 and is not dependent on ITC^DeltaCom to determine it. ITC^DeltaCom
9 needs every day of its requested 30 days to analyze the bills for accuracy
10 and to dispute bills that are not correct. In a typical month, ITC^DeltaCom
11 receives approximately 1700 invoices over 21 billing periods. Errors are
12 common as is evidenced by the nearly 4000 billing disputes that are
13 currently pending. A reasonable and fair outcome would be for BellSouth
14 to provide ITC^DeltaCom 30 days from when ITC^DeltaCom receives its
15 bill. This requirement would put BellSouth firmly in charge of when it gets
16 paid, with no corresponding costs to ITC^DeltaCom.

17
18 **Issue 60: Deposits**

19 **Q: WITH RESPECT TO SUBPART (A) OF THIS ISSUE, BELL SOUTH**
20 **CLAIMS THAT IT WOULD BE UNREASONABLE TO MAKE THE**
21 **DEPOSIT LANGUAGE RECIPROCAL, BECAUSE BELL SOUTH IS NOT**
22 **"SIMILARLY SITUATED" WITH A COMPETITIVE CARRIER. DO YOU**
23 **AGREE?**

1 A: I agree that BellSouth is not “similarly situated” with a competitive provider
2 in that, unlike BellSouth, competitive carriers such as ITC^DeltaCom have
3 no captive customers against whom they can discriminate. For this
4 reason, ITC^DeltaCom’s tariff language, which BellSouth claims is “more
5 rigid” than BellSouth’s proposed language, does not tell the whole story.
6 Regardless of ITC^DeltaCom’s tariff language, no ITC^DeltaCom
7 customer has to accept these, or any other terms, proposed by
8 ITC^DeltaCom unless the customer agrees. On the other hand,
9 interconnecting carriers must accept whatever terms BellSouth dictates.
10 For this very reason, reciprocal deposit language should be required by
11 the Authority as a way of helping to make the parties more “similarly
12 situated” with respect to market power. If the terms that BellSouth wants
13 are truly reasonable, then BellSouth should be willing to comply with the
14 same terms it seeks to extract from its captive customers. ITC^DeltaCom
15 currently bills BellSouth approximately monthly pursuant to its
16 Interconnection Agreement. Thus, reciprocal deposit language is
17 appropriate.

18
19 **Q: BELLSOUTH CONTINUES TO ASSERT THAT ITC^DELTACOM**
20 **SHOULD NOT BE ELIGIBLE FOR A RETURN OF ITS DEPOSIT**
21 **SIMPLY BY GENERATING A GOOD PAYMENT HISTORY.**
22 **BELLSOUTH CONTENDS THAT A GOOD PAYMENT HISTORY DOES**

1 **NOT INSULATE IT FROM ALL RISK OF DEFAULT. DO YOU AGREE?**
2 **IS THIS A REASONABLE POSITION?**

3 A: I do agree that, absent holding a deposit from each customer in perpetuity,
4 there is no way for BellSouth to realize the absolute insulation from
5 business risk that it seems to desire. However, competitive markets are
6 characterized by greater levels of risk and greater possibilities of return
7 than regulated monopoly markets. It is unreasonable for BellSouth to
8 expect greater insulation from risk, by way of its residual market power,
9 than that available to competitive market participants.

10
11 With respect to subpart (b) of this issue, BellSouth is seeking not the
12 reasonable assurance of payment, but absolute insurance from ordinary
13 business risk. While a good payment history does not guarantee
14 BellSouth the near certainty that it seems to demand with respect to future
15 payment, it is reasonable.

16
17 It is natural for BellSouth, as a government-created monopoly, to seek to
18 raise rates to the full extent its market power will allow. BellSouth's
19 request that its competitors insure it against the ordinary risks of being a
20 wholesale provider is simply another way of transferring costs (in the form
21 of business risk) from its shareholders to its competitors. Such a transfer
22 of costs has no different effect than would an outright price increase.

1 It is helpful to consider the severity of the “problem,” given the clear
2 burden of the “cure” to be borne by competitive carriers such as
3 ITC^DeltaCom. According to the FCC’s ARMIS database, BellSouth’s
4 uncollectible rate on interstate special access services sold in Tennessee
5 has risen somewhat, but at a remarkably low rate, over the past three
6 years. This is all the more remarkable given the striking growth in
7 interstate special access revenue over the same time period. Based on
8 the numbers reported in FCC ARMIS Report 43-04, BellSouth’s
9 uncollectible rates from 2000 through 2002 increased by approximately
10 3.77%.⁴ To gain some perspective on these percentage numbers, in
11 absolute terms, BellSouth’s uncollectible revenues have increased by
12 about \$2 million during this time period, while its total interstate special
13 access revenues in Tennessee grew by nearly \$72 million. BellSouth
14 never disputes ITC^DeltaCom’s assertion that BellSouth faces no
15 extraordinary risks other than those borne by other market participants.
16 BellSouth only responds that, even with a demonstrated history of good
17 payment, there is some chance a customer will still default. This is an
18 unpleasant part of a competitive marketplace, but not a basis for
19 transferring costs to ITC^DeltaCom.
20

⁴ Data discussed is taken from the BellSouth Tennessee information on the FCC ARMIS Report 43-04 for the years 2000-2002. Percentage interstate special access uncollectibles were calculated by dividing the uncollectible interstate revenue (line 4040, column d) by the interstate special access revenue (line 4012, column d).

1 **Q: HAS THE FCC EVER SANCTIONED DEPOSIT REQUIREMENTS LIKE**
2 **THOSE BELLSOUTH HAS SUBMITTED IN THIS PROCEEDING?**

3 A: No.

4

5 **Q: DOES BELLSOUTH APPLY THE SAME CREDIT ANALYSIS TO BOTH**
6 **WHOLESALE AND RETAIL CUSTOMERS?**

7 A: Based on BellSouth's data response to Interrogatories
8 in North Carolina, it appears that BellSouth has collected deposits from
9 percent of its wholesale customers, but only from
10 its retail business customers.

11

12 **Issue 62: Limitation on Backbilling**

13 **Q: DO YOU BELIEVE THAT THE PROPER TIME FRAME FOR**
14 **BELLSOUTH TO RECOVER BACKBILLED AMOUNTS SHOULD**
15 **CORRESPOND TO THE TIME UNDER WHICH CIVIL LITIGANTS IN**
16 **TENNESSEE HAVE TO INITIATE RECOVERY FOR A CONTRACT**
17 **CAUSE OF ACTION?**

18

19 A: No. Because the Tennessee Regulatory Authority has broad authority to
20 regulate the rates and billing practices of common carriers, the Authority is
21 free to set different terms for carriers seeking the recovery of carrier-to-
22 carrier backbilled charges, as opposed to end-user backbilled charges,
23 and it should in this instance. The time period of 90 days requested by

1 ITC^DeltaCom is reasonable given the circumstances of the parties'
2 relationship and the difficulty that ITC^DeltaCom has in collecting back-
3 billed charges from its own customers.

4
5 It seems unreasonable that BellSouth on the one hand contends that 30
6 days from the billing date is an adequate period for ITC^DeltaCom to
7 analyze the accuracy of its bill, but that BellSouth should have up to 6
8 years to discover and bill for any errors it makes. The 90-day backbilling
9 limitation proposed by ITC^DeltaCom is necessary to provide the requisite
10 incentives for BellSouth to deliver timely and accurate bills to
11 ITC^DeltaCom. As BellSouth well knows, in a competitive environment
12 customers are unlikely to accept charges backbilled in excess of 90 days.
13 Moreover, in a competitive market churn figures are higher, so it is
14 possible that after the 6 years proposed by BellSouth, many of these
15 same customers may no longer be with ITC^DeltaCom.

16
17 Charges that are backbilled after 90 days are substantially uncollectible by
18 ITC^DeltaCom from its customers, which is why ITC^DeltaCom has a
19 policy of not backbilling retail customers unless fraud or intentional
20 misconduct is uncovered. Moreover, even if the customer agrees to pay
21 the charges, the customer will have a negative opinion of ITC^DeltaCom.
22 Thus, with no reasonable backbilling window, BellSouth has no incentive
23 to improve its own billing accuracy. At best (for BellSouth), it gets to

1 impose costs on its competitors that they must absorb (because their own
2 customers are either gone or refuse to pay). At worst, the competitor
3 recovers from its customer but suffers from a customer perception of
4 incompetence. Because of these distorted incentives, the business
5 relationship between BellSouth and ITC^DeltaCom is not directly
6 comparable to an ordinary contract, where both parties have an incentive
7 to diligently comply and police compliance. For these reasons, the
8 Authority should exercise its lawful jurisdiction and impose a reasonable
9 time limitation on actions to recover backbilled charges under this
10 interconnection agreement.

11
12 Further, ITC^DeltaCom's ability to verify the correctness of BellSouth's
13 billing is diminished over time due to issues surrounding retention and
14 quality of data. It is much more difficult to verify records and identify billing
15 errors when bills are not rendered in a reasonable period of time.

16
17 It should be noted that until recently, BellSouth limited its back billing for
18 FCC tariffed services to 90 days. BellSouth issued a carrier notification on
19 May 16, 2003 extending the special access back billing period to 180
20 days. While BellSouth's ability to bill promptly and correctly should be
21 improving, they are extending back billing periods for tariffed services and
22 asking the Authority to approve a six year back billing period in

1 Tennessee. This further demonstrates the need for a reasonable back
2 billing period to be included in this interconnection agreement.

3
4 Finally, the Authority should note that allowing BellSouth the ability to
5 backbill over 90 days encourages BellSouth to backbill rather than "fix" its
6 billing problems. Attached as Exhibit D is an affidavit from
7 ITC/DeltaCom's Senior Manager of Line Cost Accounting, Mr. Kevin
8 McEacharn, and an e-mail from BellSouth regarding spreadsheets
9 showing backbilling by BellSouth for ADUF charges.

10 **Q: DOES BELLSOUTH HAVE BACKBILLING LIMITS WITH OTHER**
11 **TELECOM CARRIERS?**

12
13 A: Yes. I have attached as Exhibit E BellSouth's contract with
14 provided by BellSouth, which limits backbilling to . In addition, in
15 North Carolina, BellSouth provided contracts which provided a limit of
16
17

18 **Q: DOES THIS CONCLUDE YOUR TESTIMONY?**

19 A: Yes.

EXHIBIT A

BELLSOUTH

BellSouth Interconnection Services
575 West Peachtree Street
Atlanta, Georgia 30375

Carrier Notification
SN91083665

Date: May 23, 2003

To: Competitive Local Exchange Carriers (CLECs)

Subject: CLECs - REVISED; Reconciliation and Retroactive Billing of Unbundled Network Element - Platform (UNE-P) Market Rates (Originally posted on April 9, 2003)

As described in Carrier Notification SN91083301, posted to the BellSouth Interconnection Services' Web site on August 30, 2002, BellSouth began reconciling and applying retroactive billing of UNE-P Market Rates, where applicable, in October 2002. This first phase of reconciliation applied to recurring charges for UNE-P lines within the Federal Communications Commission (FCC) Unbundled Local Switching Exemption billed in April 2002 through June 2002 for Louisiana, and October 2001 through December 2001 for Florida.

Further reconciliation billing did not occur until January 2003. During this second phase, BellSouth reconciled and billed UNE-P Market Rates again for the same criteria and states but for the timeframes of July - August 2002 for Louisiana, and January - February 2002 for Florida.

The most recent and third phase of UNE-P Market Rate billing occurred in March 2003, and again applied to the same criteria but for the timeframes of September - October, 2002 for Louisiana and March - April, 2002 for Florida.

This is to advise that in May 2003, BellSouth will apply the fourth phase of reconciliation and billing of UNE-P Market Rates. This phase shall include recurring and nonrecurring charges for UNE-P lines within the FCC Unbundled Local Switching Exemption and will apply to Florida, Georgia, Louisiana, North Carolina and Tennessee. BellSouth will adhere to each CLEC's Interconnection Agreement and the state statute of limitations in the application of these charges. Billing shall apply to the following timeframes unless otherwise limited by the Interconnection Agreement.

Florida:	May 2002 - January 2003
Georgia:	February 2000 - January 2003
Louisiana:	November 2002 - January 2003
North Carolina:	February 2000 - January 2003
Tennessee:	February 2000 - January 2003

Due to the timing of entering the charges into the billing system, some charges were actually applied in the April 2003 bill period. The reconciled charges were entered into BellSouth's billing system on April 26, 2003 to be effective immediately. Therefore, CLECs with bill periods on the 26th and greater may have received their reconciled charges on their April 2003 bill for the impacted Q Accounts rather than the May bill. Not all CLECs with a bill period of the 26th and greater received the reconciled billing in the April bill period as the processing times varied for each state. BellSouth apologizes for any inconvenience this may have caused.

JW EXHIBIT A

A prospective mechanized billing application of UNE-P Market Rates is still under development and an implementation date has not been determined. BellSouth will reconcile under-billed UNE-P Market Rates and will bill every six months from this point forward (every May and November of each year) until such mechanized solution can be developed.

The charges will be listed in the Other Charges and Credits (OC&C) portion of your company's BellSouth bill. Further, BellSouth will provide the underlying data supporting BellSouth's reconciliation of the charges for each affected telephone number on compact disc to the billing contact name provided by your BellSouth Local Contract Manager.

If you have questions regarding the Interconnection Agreement, please contact your Local Contract Manager. If you have questions regarding billing, please contact BellSouth's Billing and Collections department.

Sincerely,

ORIGINAL SIGNED BY JERRY HENDRIX

Jerry Hendrix - Assistant Vice President
BellSouth Interconnection Services

JW EXHIBIT A

EXHIBIT D

AFFIDAVIT

STATE OF GEORGIA)

COUNTY OF TROUP


I, Kevin McEachern, Sr. Manager - Line Cost for ITC^DeltaCom Communications, Inc. d/b/a ITC^DeltaCom, being first duly sworn, do hereby affirm that the following set forth below is true:

I am over the age of 18. I have been employed by ITC^DeltaCom Communications, Inc. for 5 years.


ITC^DeltaCom has received the following notices of items and amounts that were backbilled beginning in the fourth quarter of 2002 (retroactive through February 2000) from BellSouth Telecommunications, Inc. (see attached Carrier Notifications):

- | | |
|--|--------------|
| 1. OSS - Cancelled LSR (Non-CASS monthly billing): | \$ 439.67 |
| 2. OSS - Per Element: | \$11,276.32 |
| 3. Reptype-C UNE Orders: | \$ 35,377.28 |
| 4. OSS - Cancelled LSR (Non-CASS Billing) | \$ 890.40 |
| 5. ADUF/ODUF Charges | \$118,135.31 |

At no time, however, has BellSouth, in accordance with APSC Telephone Rules, Rule T-5 (C)(5), extended the option to repay the amounts due in monthly installments equal to the period of backbilling.


Signature of Affiant

Sworn to and Subscribed before me
this the 10th day of June, 2003.


Notary Public

My Commission Expires: MY COMMISSION EXPIRES MARCH 2, 2004.

JW EXHIBIT D



"Nelms, Leasona"
<Leasona.Nelms@Bell
South.com>

03/21/2003 09:27 AM

To: "KMdEacham@icdellacom.com" <KMdEacham@icdellacom.com>
cc:
Subject: DUF Reconciliation Files

Per our conversation, BellSouth is reconciling DUF (daily usage file) billing for the time period February 2000 through November 2001. Attached is an Excel spreadsheet with pivot table that will provide details as to what was billed and what should have been billed. Please contact me with questions and/or confirmation of receipt. Thank you.

Leasona Nelms
205 977 8714
e-mail: leasona.nelms@bellsouth.com

JW EXHIBIT D